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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JOSE SALCEDO,
12 CDCR #V-30843,

13 Plaintiff,

14 vs.
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16 MATTHEW CATE; EDMUND BROWN;
17 DOMINGO URIBE; DOES 1 - 20,

18 Defendants.
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20

Civil No. 11-2859 BEN (WMC)

ORDER:

**(1) DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AS BARRED BY 28 U.S.C. § 1915(g)**

[ECF No. 2]

AND

**(2) DISMISSING CASE FOR
FAILURE TO PAY FILING
FEE REQUIRED BY
28 U.S.C. § 1914(a)**

21 Plaintiff, a state inmate currently incarcerated at Centinela State Prison located in
22 Imperial, California and proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C.
23 § 1983. Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a); instead,
24 he has submitted a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C.
25 § 1915(a) [ECF No. 2].

26 **I. Motion to Proceed IFP**

27 Section 1915 of Title 28 of the United States Code allows certain litigants to pursue civil
28 litigation IFP, that is, without the full prepayment of fees or costs. 28 U.S.C. § 1915(a)(2).

1 However, the Prison Litigation Reform Act ("PLRA") amended section 1915 to preclude the
 2 privilege to proceed IFP:

3 . . . if the prisoner has, on 3 or more prior occasions, while
 4 incarcerated or detained in any facility, brought an action or appeal
 5 in a court of the United States that was dismissed on the grounds
 6 that it is frivolous, malicious, or fails to state a claim upon which
 relief can be granted, unless the prisoner is under imminent danger
 of serious physical injury.

7 28 U.S.C. § 1915(g). "This subdivision is commonly known as the 'three strikes' provision."
 8 *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter "*Andrews*"). "Pursuant to
 9 § 1915(g), a prisoner with three strikes or more cannot proceed IFP." *Id.*; see also *Andrews v.*
 10 *Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter "*Cervantes*") (under the PLRA,
 11 "[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP
 12 status under the three strikes rule[.]"). The objective of the PLRA is to further "the
 13 congressional goal of reducing frivolous prisoner litigation in federal court." *Tierney v. Kupers*,
 14 128 F.3d 1310, 1312 (9th Cir. 1997).

15 "Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which were
 16 dismissed on the ground that they were frivolous, malicious, or failed to state a claim,"
 17 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), "even if the district court styles
 18 such dismissal as a denial of the prisoner's application to file the action without prepayment of
 19 the full filing fee." *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). Once a prisoner has
 20 accumulated three strikes, he is prohibited by section 1915(g) from pursuing any other IFP action
 21 in federal court unless he can show he is facing "imminent danger of serious physical injury."
 22 See 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)'s exception for IFP
 23 complaints which "make[] a plausible allegation that the prisoner faced 'imminent danger of
 24 serious physical injury' at the time of filing.").

25 **II. Application of 28 U.S.C. § 1915(g)**

26 As an initial matter, the Court has carefully reviewed Plaintiff's Complaint and has
 27 ascertained that there is no "plausible allegation" to suggest Plaintiff "faced 'imminent danger
 28 of serious physical injury' at the time of filing." *Cervantes*, 493 F.3d at 1055 (quoting 28

1 U.S.C. § 1915(g)). In his Complaint, Plaintiff claims that he is on track to be transferred to an
 2 out of state prison where he claims he will suffer harm. These allegations are speculative, at
 3 best, given Plaintiff does not identify with certainty where he will be transferred or the specific
 4 risk to his safety.

5 A court “may take notice of proceedings in other courts, both within and without the
 6 federal judicial system, if those proceedings have a direct relation to matters at issue.” *Bias*
 7 *v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d
 8 801, 803 n.2 (9th Cir. 2002)); *see also United States ex rel. Robinson Rancheria Citizens*
 9 *Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). Thus, this Court takes judicial
 10 notice that Plaintiff has had three prisoner civil actions dismissed on the grounds that they were
 11 frivolous, malicious, or failed to state a claim upon which relief may be granted.

12 They are:

- 13 1) *Salcedo v. Does 1-10*, Civil Case No. EDCV 07-965 (AGR) (C.D. Cal. Sept. 25,
 14 2007 Order dismissing complaint for failure to state a claim upon which relief
 15 may be granted) (strike one);
- 16 2) *Salcedo v. Does 1-20*, Civil Case No. EDCV 07-1478 UA (AGR) (C.D. Cal. Apr.
 17 2, 2008 Order dismissing complaint for failure to state a claim upon which relief
 18 may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) (strike two);
- 19 3) *Salcedo v. Does 1-10*, Civil Case No. EDCV 08-0954 (AGR) (C.D. Cal. Sept. 29,
 20 2008 Order dismissing complaint for failure to state a claim upon which relief
 21 may be granted) (strike three).

22 Accordingly, because Plaintiff has, while incarcerated, accumulated three “strikes”
 23 pursuant to § 1915(g), and he fails to make a “plausible allegation” that he faced imminent
 24 danger of serious physical injury at the time he filed his Complaint, he is not entitled to the
 25 privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at 1055; *Rodriguez*, 169
 26 F.3d at 1180 (finding that 28 U.S.C. § 1915(g) “does not prevent all prisoners from accessing
 27 the courts; it only precludes prisoners with a history of abusing the legal system from continuing
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1 to abuse it while enjoying IFP status"); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th
2 Cir. 1984) ("[C]ourt permission to proceed IFP is itself a matter of privilege and not right.").

3 **III. Conclusion and Order**

4 For the reasons set forth above, the Court hereby:

5 1) **DENIES** Plaintiff's Motion to Proceed IFP [ECF No.2] pursuant to 28 U.S.C.
6 § 1915(g);

7 2) **DISMISSES** this action without prejudice for failure to pay the \$350 civil filing
8 fee required by 28 U.S.C. § 1914(a), and

9 3) **DENIES** all remaining Motions as moot.

10 The Clerk shall close the file

11 **IT IS SO ORDERED.**

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13 DATED: 2/06/2012

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15 **HON. ROGER T. BENITEZ**
16 United States District Judge
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